IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

T.R.C.No.96 of 2002

T.A.NO.624/1999 OF KERALA SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, ERNAKULAM (ORDER DATED 2.5.2001).

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PETITIONER:-

MANAGING DIRECTOR,
KERALA STATE CO-OPERATIVE MARKETING FEDERATION LTD.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT:-

STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C.No. 96 of 2002

Dated this the 13th day of September, 2007.

O R D E R

H.L.Dattu, C.J.

This revision petition arises under the provisions of the Kerala General Sales Tax Act. The assessment year in question is 1988-89.

2. The assessee, being aggrieved by the orders passed by the Sales Tax Appellate Tribunal, in T.A.No.624 of 1999 is before us in this tax revision case. The assessee has raised the following questions of law for our consideration and decision.

> (i). Whether on the facts and circumstances of the case in the absence of giving retrospective effect to the proviso added through Finance Act 10 of 1997 as well as the Kerala General Sales Tax (Amendment Ordinance) Act 13 of 1998 and in terms of the terminology in the Finance Act and the Ordinance the benefit accrued on the assessee on the ground of limitation can be taken away?
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> (ii). Whether the benefit accrued through the parent section as introduced through Finance Act 13 of 93 as Sub section (6) of Section 17 can be taken away through the substitution and whether the authorities below are justified in rejecting the contention of the revision petitioners based on the said amendment?
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> (iii). Whether on the facts and circumstances of the case the authorities are justified in completing the assessments disregarding the statutory audit by the auditors of the department of Co-operation in the light of Sub section (4A) of Section 17 of the KGST Act?

(iv). Whether on the facts and circumstance in the case, the authority are justified in levying tax on cloves and cinnamon when these items reaches the hands of the assessee from the Primary Societies and when the sales effected by the assessee constitutes second sales which is not attracted sales tax?

(v). Whether on the facts and circumstances of the case the authorities are justified in levying tax on the assessee for Rs.1,88,892/- at 8% when admittedly the assessee is not the dealer in these articles and having reached these articles in the hands of the assessee as part of the procurement process of agricultural products as entrusted by the State Government and the sales are effected for liquidating the excess stock?

On these facts and circumstances of the case, has not the Tribunal erred in law in not set asiding orders under challenge?

3. In our view, the questions of law framed by the assessee is no more debatable in view of the orders passed by this Court in the case of **Geo Sea Foods V. Addl. Sales Tax Officer (2006 (1) KLT 72 (F.B.)**. In the said decision, this Court has observed as under:

"The language used in S.17A clearly means that notwithstanding anything contained in S.17 or S.18 or in any judgment, decree or order of any court or Tribunal or other authority, assessments for any period prior to 1-4-1993 shall be deemed to be pending and the same could be completed within the permitted time. In view of S.17A of the Act, the concept of reasonable period for completing assessments for the period prior to 1-4-1993 is no more of any relevance or significance. The period is as prescribed in the Act. Under S.17A all assessments prior to 1-4-1993 and not completed as on that date shall be deemed to be pending as on 1-4-1993 and it is open to the Revenue to complete such assessments in accordance with law."

4. In view of the law declared by this Court in the above-said decision, the questions of law framed by the assessee requires to be answered against the assessee and in favour of the Revenue.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS